



U.S. Department of Justice

*United States Attorney
Southern District of New York*

The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007

December 10, 2020

BY ECF AND EMAIL

The Honorable Lorna G. Schofield
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Robert Farkas, 18 Cr. 340 (LGS)*

Dear Judge Schofield:

As the Court is aware, defendant Robert Farkas ("Farkas") recently filed a supplemental sentencing submission (Dkt. 420) enclosing a letter dated December 11, 2020 from Raphael Kellman, M.D. (the "December 4 Submission"). Dkt. 420 at 1.

[REDACTED]

The Government respectfully requests permission to file the brief response to the December 4 Submission set forth below to provide the Court with information regarding (a) established precedent in this District for delaying a defendant's surrender date when he or she claims medical problems and cites concerns regarding COVID-19 in an effort to avoid a sentence of incarceration, and (b) critical flaws in the arguments set forth in the December 4 Submission. The Government has conferred with counsel for Farkas, who have conveyed their client has no objection to the Government's request to file a brief response to the December 4 Submission. Should the Court grant the instant request, the Government's brief response to the December 4 Submission is as follows:

The December 4 Submission should not dissuade the Court from imposing a substantial sentence of incarceration for two primary reasons.

First, given the availability of delayed surrender, Farkas's arguments about his medical conditions do not obviate the need for a substantial sentence of incarceration that would serve as just punishment for his role in this massive fraud. This Court and other courts in this District have previously imposed custodial sentences and scheduled delayed surrender dates when defendants have sought non-custodial sentences based on arguments that their medical conditions placed them at a heightened risk of severe complications from COVID-19. *See, e.g., United States v. Colin*

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Akparanta, 19 Cr. 363 (LGS) (Dkt. 53, 54, 60) (40-month prison sentence with a delayed surrender date of April 23, 2021 for 44-year-old correctional officer convicted of sexually abusing female inmates who cited ongoing medical conditions); *United States v. Michelle Morton*, 16 Cr. 371 (RA) (Dkt. 945, 946) (15-month prison sentence with a delayed surrender date of May 18, 2021 for 60-year-old defendant convicted of securities and investment adviser fraud with documented underlying medical conditions); *United States v. Richard Wong*, 20 Cr. 210 (LTS) (Dkt. 39, 40, 44) (18-month prison sentence with delayed surrender date of April 29, 2021 for 59-year-old defendant convicted of wire fraud who cited ongoing medical conditions). When setting a delayed surrender date, at least one court in this District has also stated that it would consider an adjournment of a delayed surrender date based on the status of the COVID-19 pandemic. *See, e.g., Morton*, 16 Cr. 371 (RA) (Dkt. 946 (Sentencing Tr. at 42-43)). Accordingly, even assuming that Farkas has medical conditions that could contribute to an increased risk of suffering complications from COVID-19 – which, for the reasons described below, is an assumption that remains tenuous, at best – this would not justify such extraordinary relief as a non-custodial sentence.

Second, it bears briefly noting that Farkas's arguments about his increased vulnerability to COVID-19 at a facility to which he has not yet been designated have no established scientific basis. [REDACTED]

[REDACTED] Indeed, none of these conditions are recognized by the Centers for Disease Control as resulting in an increased risk of severe illness from the virus that causes COVID-19. *See* Centers for Disease Control and Prevention, Coronavirus Disease 2019: People with Certain Medical Conditions, *available at* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Dec. 9, 2020).

For the foregoing reasons, the Government respectfully submits that the Court can, and should, impose any term of imprisonment that it would have imposed in the absence of COVID-

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19. However, rather than order a surrender date in the next few months, the Court may delay Farkas's surrender until the spring of 2021 or until such time as the COVID-19 pandemic is better controlled. This reasonable middle ground permits the Court both to accommodate Farkas's concerns about his health risks and to impose a sentence that adequately serves the purpose of sentencing.

Respectfully submitted,

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Acting Under 28 U.S.C. § 515

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